

FACTUAL HISTORY

On August 28, 1991 appellant, then a 34-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on August 27, 1991 he sustained a right knee injury when he hit his right knee on a dumpster bracket as he was dumping trash while in the performance of duty. OWCP accepted the claim for contusion of the right knee; unspecified internal derangement of the right knee; traumatic arthropathy of the right lower leg; closed dislocation lumbar vertebra; degeneration of lumbar or lumbosacral intervertebral disc; and temporary aggravation of the degeneration of lumbar or lumbosacral intervertebral disc L4-5. It paid appellant wage-loss compensation on the supplemental rolls as of February 1, 2010 and on the periodic rolls as of January 16, 2011.

In a December 8, 2017 report, Dr. Seth Goldsmith, a Board-certified orthopedic surgeon, noted a diagnosis of right knee arthrofibrosis following multiple knee procedures, including total knee replacement. He indicated that appellant's right knee condition had not resolved because he had been denied physical therapy following his January 2016 knee revision, which caused a loss of range of motion (ROM).

In a December 8, 2017 referral form, Dr. Goldsmith referred appellant for physical therapy to facilitate his recovery and return to productive and suitable employment. He noted that physical therapy was needed to help with ROM, but with no guarantee that it would be successful.

In a separate report also dated December 8, 2017, Dr. Goldsmith explained that he did not believe that physical therapy would improve appellant's right knee ROM, as too much time had passed, likely causing the scar tissue to be too dense for physical therapy to be helpful, but that physical therapy might be helpful to alleviate appellant's antalgic gait and low back pain.

OWCP continued to authorize additional physical therapy through April 13, 2019.

On May 3, 2019 OWCP received a request for authorization of an additional two months of physical therapy.

By letter dated May 8, 2019, OWCP authorized physical therapy for the requested period May 6 to July 6, 2019, and advised appellant that, if physical therapy was requested thereafter, authorization from OWCP would be contingent upon receipt of updated medical information and a treatment plan based upon a current medical examination from his treating physician.

On July 11, 2019 OWCP received a request for authorization for an additional 12 weeks of physical therapy.

In a July 11, 2019 decision, OWCP denied the request for additional ongoing physical therapy because the medical evidence did not support that it was medically necessary to address appellant's employment-related conditions.

On July 22, 2019 OWCP received a May 16, 2019 report from Dr. Goldsmith who indicated that appellant was seen for arthrofibrosis of his right knee and was in continued need of supervised physical therapy. Dr. Goldsmith explained that intense physical therapy was needed to maintain ROM of the knee at 90 degrees. He also indicated that appellant was not a candidate for

self-directed physical therapy or an alternate form of treatment because in the past his range of flexion had decreased quite a bit to the point he could not bend the knee.

On July 30, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

On September 27, 2019, following a preliminary review, an OWCP hearing representative found that the case was not in posture for decision with regard to whether the requested authorization for additional physical therapy was medically necessary to address the effects of appellant's accepted work-related conditions. The hearing representative set aside the July 11, 2019 decision and remanded the case for a second opinion examination to determine if the acceptance of the claim should be expanded to include right knee arthrofibrosis and to determine the necessity of the requested physical therapy.

On October 21, 2019 OWCP referred appellant to Dr. Clarence Fossier, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether the acceptance of the claim should be expanded to include additional conditions, the need for ongoing medical treatment of his accepted conditions, and the extent of appellant's current disability.

In a January 21, 2020 report, Dr. Fossier indicated that he had reviewed appellant's medical history and a statement of accepted facts (SOAF). He related that appellant had undergone a failed total right knee arthroplasty, and had developed lumbar subluxation which was accepted as a consequence of the right knee condition. Regarding the conditions of internal derangement of the right knee, contusion of the right knee, and temporary aggravation of degeneration of lumbar and lumbosacral intervertebral disc L4-L5, Dr. Fossier found they were no longer active. He further found that appellant's traumatic right knee arthropathy had not fully resolved. Dr. Fossier explained that appellant had an infected total knee arthroplasty and would never recover beyond his current state. He opined that the acceptance of the claim should be expanded to include right knee arthrofibrosis. Regarding physical therapy, Dr. Fossier determined that it would not provide any benefit for the knee, as appellant had not had any objective functional improvement from prior treatments. He further opined that appellant's prognosis was poor, his ROM would not increase, his pain would remain, and there was a chance of infection. Dr. Fossier advised that an above-the-knee amputation could be considered, but related that appellant would not accept this, and he was not sure that appellant would improve functionally. He opined that appellant was totally disabled from performing full-duty work of any kind due to the reduced ROM of his right knee and knee pain.

On February 26, 2020 OWCP determined that a conflict existed between the opinions of Dr. Goldsmith, the treating physician, and Dr. Fossier, the second opinion physician, regarding the need for physical therapy.

On August 11, 2020 OWCP accepted the additional condition of right knee ankylosis.

By letter dated August 19, 2020, OWCP referred appellant for an impartial medical evaluation with Dr. Mark W. Manoso, a Board-certified orthopedic surgeon selected as the impartial medical examiner (IME). It provided Dr. Manoso with a SOAF, the medical record, and a series of questions.

In a September 15, 2020 report, Dr. Manoso noted appellant's history of injury and he provided an extensive summary of appellant's prior medical treatment. He also provided extensive right knee physical examination findings. Dr. Manoso found that appellant's right knee was stable to varus, valgus, anterior drawer, posterior drawer, and Lachman's stress testing, with a negative patellar grind and a negative McMurray. His diagnoses included: preexisting right knee arthritis and chronic anterior cruciate ligament (ACL) rupture, preexisting the employment injury of August 27, 1991 "on a more probable than not basis"; contusion of the right knee, resolved, due to the employment injury; status post knee arthroscopy with revision, partial meniscectomy, and debridement related to the employment injury; and post-traumatic arthritis, accepted as related to the employment injury of August 27, 1991, resolved.

Dr. Manoso opined that appellant had reached maximum medical improvement (MMI) related to his right knee replacement. He explained that there were no signs of loosening or failure and opined that it was unlikely that another revision of his knee replacement would provide appellant significantly more ROM than he had as of the examination.

In letters dated September 24 and November 2, 2020, addressed to Dr. Manoso, OWCP requested that he provide an opinion regarding the conflict in the medical opinion related to appellant's need for ongoing physical therapy for the right knee.

In a December 7, 2020 addendum, Dr. Manoso related that appellant had undergone multiple revision surgeries and multiple rounds of physical therapy with no improvement in his right knee arthrofibrosis. He noted that despite significant postoperative physical therapy appellant developed arthrofibrosis in his right knee. Dr. Manoso found that appellant's right knee was fixed and stable, without signs of loosening, and that appellant had reached MMI. He opined that ongoing physical therapy sessions were palliative in nature and would not be considered curative. Dr. Manoso advised that no further medical treatment for the right knee would be considered reasonable, appropriate, or necessary.

By decision dated January 8, 2021, OWCP denied authorization for physical therapy because the evidence of record did not support that it was medically necessary to address the effects of appellant's employment-related condition. It found that Dr. Manoso's report represented the special weight of the medical evidence.

LEGAL PRECEDENT

Section 8103(a) of FECA provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician which OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.³ In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest

³ 5 U.S.C. § 8103(a); *see A.N.*, Docket No. 20-0320 (issued March 31, 2021); *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.B.*, 58 ECAB 588 (2007).

amount of time.⁴ OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.⁵

While OWCP is obligated to pay for treatment of employment-related conditions, a claimant has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁶ Causal relationship requires supporting rationalized medical evidence.⁷ Therefore, in order to prove that a procedure is warranted, a claimant must establish that the procedure was for a condition causally related to the employment injury and that the procedure was medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.⁸

OWCP procedures provide:

“For most orthopedic injuries, PT [physical therapy] services within the first 120 days after a traumatic injury are allowed without any prior authorization required, and it is also customary to automatically authorize PT postoperatively for orthopedic surgeries, usually for a period of 60 days post-surgery. If a request for therapy beyond these time frames is received, OWCP needs to review the file to determine whether further services should be authorized.”⁹

To determine whether a claimant requires physical therapy beyond the initial authorization period, OWCP reviews the record to determine whether the need for physical therapy is due to the accepted work injury and whether the additional therapy is expected to yield functional improvement. Additionally, its procedures provide, “To authorize additional physical therapy for pain or to maintain function, OWCP should ensure that the pain is associated with measurable objective findings such as muscle spasm, atrophy and/or radiologic changes in joints, muscles, or bones, or that pain has placed measurable limitations upon the claimant's physical activities.”¹⁰

Section 8123 (a) of FECA provides in pertinent part that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the

⁴ 5 U.S.C. § 8103.

⁵ *E.L.*, Docket No. 17-1445 (issued December 18, 2018); *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007); *Daniel J. Perea*, 42 ECAB 214 (1990).

⁶ *See L.S.*, Docket No. 18-1746 (issued April 9, 2019); *Kennett O. Collins, Jr.*, 55 ECAB 648, 654 (2004).

⁷ *K.W.*, Docket No. 18-1523 (issued May 22, 2019).

⁸ *Id.*

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Physical Therapy*, Chapter 2.810.19 (September 2010).

¹⁰ *Id.*

Secretary shall appoint a third physician who shall make an examination.¹¹ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹² When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹³

ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying authorization for physical therapy after July 6, 2019.

OWCP properly found that a conflict in medical opinion was created between Dr. Fossier, an OWCP referral physician, and Dr. Goldsmith, appellant's attending physician, as to whether physical therapy should be authorized after July 6, 2019. Consequently, pursuant to 5 U.S.C. § 8123(a) of FECA, OWCP properly referred appellant to Dr. Manoso for an impartial medical examination to resolve the conflict in medical opinion.¹⁴

In a report dated September 15, 2020, Dr. Manoso extensively reviewed appellant's medical history and noted findings on examination. He indicated that conditions related to the work injury including contusion of the right knee, and post-traumatic arthritis had resolved. Dr. Manoso opined that appellant had reached MMI related to his right knee replacement. He found that there were no signs of loosening or failure, and it was unlikely that another revision of his knee replacement would provide him significantly more ROM.

In a December 7, 2020 addendum, Dr. Manoso noted that appellant had a well-fixed knee replacement without signs of loosening. He related that appellant had undergone multiple revision surgeries and multiple rounds of physical therapy with no improvement in his arthrofibrosis. Dr. Manoso explained that despite significant postoperative physical therapy appellant developed arthrofibrosis. He advised that appellant's right knee condition was fixed and stable and had reached MMI. Dr. Manoso opined that ongoing physical therapy sessions were palliative in nature and would not be considered curative. He further opined that, to a reasonable degree of medical probability and certainty, no further medical treatment was necessary or medically appropriate for the work-related injury.

In situations where the case is referred to an IME for the purpose of resolving a medical conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁵ Dr. Manoso had full knowledge of the

¹¹ 5 U.S.C. § 8123(a).

¹² 20 C.F.R. § 10.321.

¹³ *K.S.*, Docket No. 19-0082 (issued July 29, 2019).

¹⁴ *See L.K.*, Docket No. 18-1183 (issued May 12, 2020); *H.N.*, Docket No. 18-0501 (issued February 20, 2020).

¹⁵ *H.N.*, *id.*

relevant facts and evaluated the course of appellant's condition, and his opinion was based on proper factual and medical history.¹⁶ He accurately summarized the relevant medical evidence, provided detailed findings on examination, and reached a conclusion that no further treatment was needed for the accepted conditions.¹⁷ Dr. Manoso's opinion, which is detailed and well rationalized, is entitled to special weight and establishes that OWCP has not abused its discretion in denying appellant's request for additional physical therapy.¹⁸ The Board thus finds that Dr. Manoso's opinion represents the special weight of the evidence, and OWCP properly relied on his report in denying authorization for the requested physical therapy.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP did not abuse its discretion in denying authorization for physical therapy after July 6, 2019.

¹⁶ See 5 U.S.C. § 8123(a); *J.E.*, Docket No. 18-0228 (issued August 8, 2019); *Solomon Polen*, 51 ECAB 341 (2000) (where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight).

¹⁷ *Id.*

¹⁸ See *D.D.*, Docket No. 09-1603 (issued April 8, 2010).

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board